

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WODENA CAVNAR; ROSALINE TERRILL; and LINDA PARKS, on their own and on the behalf of all others similarly situated,

NO: 2:14-CV-235-RMP

STIPULATED PROTECTIVE ORDER

Plaintiffs.

V.

BOUNCEBACK, INC, a Missouri corporation; STONE FENCE HOLDINGS, INC; GALE KRIEG; and DOES 1-20.

Defendants.

Before the Court is the Stipulated Motion for Protective Order, ECF No. 20.

In light of the parties' stipulation to the terms of the protective order, **IT IS**

HEREBY ORDERED that the Stipulated Motion for Protective Order, ECF No.

20 is GRANTED

The Court further orders as follows:

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby
6 stipulate to and petition the court to enter the following Stipulated Protective
7 Order. The parties acknowledge that this Order does not confer blanket protections
8 on all disclosures or responses to discovery and that the protection it affords from
9 public disclosure and use extends only to the limited information or items that are
10 entitled to confidential treatment under the applicable legal principles. The parties
11 further acknowledge, as set forth in Section 12.3, below, that this Stipulated
12 Protective Order does not entitle them to file confidential information under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the
15 designation of information or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
17 how it is generated, stored or maintained) or tangible things that qualify for
18 protection under Federal Rule of Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House
20 Counsel (as well as their support staff).

1 2.4 Designating Party: a Party or Non-Party that designates information
2 or items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.5 Disclosure or Discovery Material: all items or information, regardless
5 of the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced
7 or generated in disclosures or responses to discovery in this matter.

8 2.6 Expert: a person with specialized knowledge or experience in a
9 matter pertinent to the litigation who has been retained by a Party or its counsel to
10 serve as an expert witness or as a consultant in this action.

11 2.7 House Counsel: attorneys who are employees of a party to this action.
12 House Counsel does not include Outside Counsel of Record or any other outside
13 counsel.

14 2.8 Non-Party: any natural person, partnership, corporation, association,
15 or other legal entity not named as a Party to this action.

16 2.9 Outside Counsel of Record: attorneys who are not employees of a
17 party to this action but are retained to represent or advise a party to this action and
18 have appeared in this action on behalf of that party or are affiliated with a law firm
19 which has appeared on behalf of that party.

1 2.10 Party: any party to this action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this action.

6 2.12 Professional Vendors: persons or entities that provide litigation
7 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)
9 and their employees and subcontractors.

10 2.13 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL.”

12 2.14 Receiving Party: a Party that receives Disclosure or Discovery
13 Material from a Producing Party.

14 3. SCOPE

15 The protections conferred by this Stipulation and Order cover not only
16 Protected Material (as defined above), but also (1) any information copied or
17 extracted from Protected Material; (2) all copies, excerpts, summaries, or
18 compilations of Protected Material; and (3) any testimony, conversations, or
19 presentations by Parties or their Counsel that might reveal Protected Material.
20 However, the protections conferred by this Stipulation and Order do not cover the

1 following information: (a) any information that is in the public domain at the time
2 of disclosure to a Receiving Party or becomes part of the public domain after its
3 disclosure to a Receiving Party as a result of publication not involving a violation
4 of this Order, including becoming part of the public record through trial or
5 otherwise; and (b) any information known to the Receiving Party prior to the
6 disclosure or obtained by the Receiving Party after the disclosure from a source
7 who obtained the information lawfully and under no obligation of confidentiality to
8 the Designating Party. Any use of Protected Material at trial shall be governed by a
9 separate agreement or order.

10 4. **DURATION**

11 Even after final disposition of this litigation, the confidentiality obligations
12 imposed by this Order shall remain in effect until a Designating Party agrees
13 otherwise in writing or a court order otherwise directs. Final disposition shall be
14 deemed to be the later of (1) dismissal of all claims and defenses in this action,
15 with or without prejudice; and (2) final judgment herein after the completion and
16 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
17 including the time limits for filing any motions or applications for extension of
18 time pursuant to applicable law.

1 5. **DESIGNATING PROTECTED MATERIAL**

2 5.1 **Exercise of Restraint and Care in Designating Material for Protection.**

3 Each Party or Non-Party that designates information or items for protection under
4 this Order must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards. The Designating Party must designate for
6 protection only those parts of material, documents, items, or oral or written
7 communications that qualify – so that other portions of the material, documents,
8 items, or communications for which protection is not warranted are not swept
9 unjustifiably within the ambit of this Order.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber or retard the case development process or
13 to impose unnecessary expenses and burdens on other parties) expose the
14 Designating Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection, that Designating Party must
17 promptly notify all other Parties that it is withdrawing the mistaken designation.

18 5.2 **Manner and Timing of Designations.** Except as otherwise provided in
19 this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise
20 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection

1 under this Order must be clearly so designated before the material is disclosed or
2 produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic
5 documents, but excluding transcripts of depositions or other pretrial or trial
6 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to
7 each page that contains protected material. If only a portion or portions of the
8 material on a page qualifies for protection, the Producing Party also must clearly
9 identify the protected portion(s) (e.g., by making appropriate markings in the
10 margins).

11 A Party or Non-Party that makes original documents or materials available
12 for inspection need not designate them for protection until after the inspecting
13 Party has indicated which material it would like copied and produced. During the
14 inspection and before the designation, all of the material made available for
15 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
16 identified the documents it wants copied and produced, the Producing Party must
17 determine which documents, or portions thereof, qualify for protection under this
18 Order. Then, before producing the specified documents, the Producing Party must
19 affix the “CONFIDENTIAL” legend to each page that contains Protected Material;
20 provided, however, that any personal identifying information contained in any

1 document shall be considered and treated as CONFIDENTIAL whether or not the
2 same has been so marked. If only a portion or portions of the material on a page
3 qualifies for protection, the Producing Party also must clearly identify the
4 protected portion(s) (e.g., by making appropriate markings in the margins).

5 (b) for testimony given in deposition or in other pretrial or trial proceedings,
6 that the Designating Party identify on the record, before the close of the deposition,
7 hearing, or other proceeding, all protected testimony.

8 (c) for information produced in some form other than documentary and for
9 any other tangible items, that the Producing Party affix in a prominent place on the
10 exterior of the container or containers in which the information or item is stored
11 the legend "CONFIDENTIAL." If only a portion or portions of the information or
12 item warrant protection, the Producing Party, to the extent practicable, shall
13 identify the protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
15 failure to designate qualified information or items does not, standing alone, waive
16 the Designating Party's right to secure protection under this Order for such
17 material. Upon timely correction of a designation, the Receiving Party must make
18 reasonable efforts to assure that the material is treated in accordance with the
19 provisions of this Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time. Unless a prompt challenge to a
4 Designating Party's confidentiality designation is necessary to avoid foreseeable,
5 substantial unfairness, unnecessary economic burdens, or a significant disruption
6 or delay of the litigation, a Party does not waive its right to challenge a
7 confidentiality designation by electing not to mount a challenge promptly after the
8 original designation is disclosed.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
10 resolution process by providing written notice of each designation it is challenging
11 and describing the basis for each challenge. To avoid ambiguity as to whether a
12 challenge has been made, the written notice must recite that the challenge to
13 confidentiality is being made in accordance with this specific paragraph of the
14 Protective Order. The parties shall attempt to resolve each challenge in good faith
15 and must begin the process by conferring directly (in voice to voice dialogue; other
16 forms of communication are not sufficient) within 14 days of the date of service of
17 notice. In conferring, the Challenging Party must explain the basis for its belief that
18 the confidentiality designation was not proper and must give the Designating Party
19 an opportunity to review the designated material, to reconsider the circumstances,
20 and, if no change in designation is offered, to explain the basis for the chosen

1 designation. A Challenging Party may proceed to the next stage of the challenge
2 process only if it has engaged in this meet and confer process first or establishes
3 that the Designating Party is unwilling to participate in the meet and confer process
4 in a timely manner.

5 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
6 court intervention, the Designating Party shall file and serve a motion to retain
7 confidentiality under Local Rule 7.1 within 21 days of the initial notice of
8 challenge or within 14 days of the parties agreeing that the meet and confer process
9 will not resolve their dispute, whichever is earlier. Each such motion must be
10 accompanied by a competent declaration affirming that the movant has complied
11 with the meet and confer requirements imposed in the preceding paragraph. Failure
12 by the Designating Party to make such a motion including the required declaration
13 within 21 days (or 14 days, if applicable) shall automatically waive the
14 confidentiality designation for each challenged designation. In addition, the
15 Challenging Party may file a motion challenging a confidentiality designation at
16 any time if there is good cause for doing so, including a challenge to the
17 designation of a deposition transcript or any portions thereof. Any motion brought
18 pursuant to this provision must be accompanied by a competent declaration
19 affirming that the movant has complied with the meet and confer requirements
20 imposed by the preceding paragraph.

1 The burden of persuasion in any such challenge proceeding shall be on the
2 Designating Party. Unless the Designating Party has waived the confidentiality
3 designation by failing to file a motion to retain confidentiality as described above,
4 all parties shall continue to afford the material in question the level of protection to
5 which it is entitled under the Producing Party's designation until the court rules on
6 the challenge.

7 7. ACCESS TO AND USE OF PROTECTED MATERIAL

8 7.1 Basic Principles. A Receiving Party may use Protected Material that is
9 disclosed or produced by another Party or by a Non-Party in connection with this
10 case only for prosecuting, defending, or attempting to settle this litigation or any
11 parallel litigation where the Plaintiff(s) are represented by Plaintiffs' counsel in
12 this case. Such Protected Material may be disclosed only to the categories of
13 persons and under the conditions described in this Order. When the litigation has
14 been terminated, a Receiving Party must comply with the provisions of section 13
15 below (FINAL DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a
17 location and in a secure manner that ensures that access is limited to the persons
18 authorized under this Order.

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
20 otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated

2 “CONFIDENTIAL” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
4 as employees of said Outside Counsel of Record to whom it is reasonably
5 necessary to disclose the information for this litigation and who have signed the
6 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
7 A;

8 (b) the Parties and the officers, directors, and employees (including House
9 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
10 this litigation and who have signed the “Acknowledgment and Agreement to Be
11 Bound” (Exhibit A);

12 (c) Experts (as defined in this Order) of the Receiving Party to whom
13 disclosure is reasonably necessary for this litigation and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (d) the court and its personnel;

16 (e) court reporters and their staff, professional jury or trial consultants,
17 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
18 for this litigation and who have signed the “Acknowledgment and Agreement to
19 Be Bound” (Exhibit A);

1 (f) lay witnesses to whom disclosure is reasonably necessary and who have
2 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (g) during their depositions, witnesses in the action to whom disclosure is
4 reasonably necessary and who have signed the “Acknowledgment and Agreement
5 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
6 ordered by the court. Pages of transcribed deposition testimony or exhibits to
7 depositions that reveal Protected Material must be separately bound by the court
8 reporter and may not be disclosed to anyone except as permitted under this
9 Stipulated Protective Order.

10 (h) the author or recipient of a document containing the information or a
11 custodian or other person who otherwise possessed or knew the information.

12 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
IN OTHER LITIGATION

13 If a Party is served with a subpoena or a court order issued in other litigation
14 that compels disclosure of any information or items designated in this action as
15 “CONFIDENTIAL,” that Party must:

16 (a) promptly notify in writing the Designating Party. Such notification shall
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena
20

1 or order is subject to this Protective Order. Such notification shall include a copy
2 of this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued
4 by the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served
6 with the subpoena or court order shall not produce any information designated in
7 this action as “CONFIDENTIAL” before a determination by the court from which
8 the subpoena or order issued, unless the Party has obtained the Designating Party’s
9 permission. The Designating Party shall bear the burden and expense of seeking
10 protection in that court of its confidential material – and nothing in these
11 provisions should be construed as authorizing or encouraging a Receiving Party in
12 this action to disobey a lawful directive from another court.

13 9. **A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
PRODUCED IN THIS LITIGATION

14 (a) The terms of this Order are applicable to information produced by a
15 Non-Party in this action and designated as “CONFIDENTIAL.” Such information
16 produced by Non-Parties in connection with this litigation is protected by the
17 remedies and relief provided by this Order. Nothing in these provisions should be
18 construed as prohibiting a Non-Party from seeking additional protections.

19 (b) In the event that a Party is required, by a valid discovery request, to
20 produce a Non-Party’s confidential information in its possession, and the Party is

1 subject to an agreement with the Non-Party not to produce the Non-Party's
2 confidential information, then the Party shall:

3 (1) promptly notify in writing the Requesting Party and the Non-Party that
4 some or all of the information requested is subject to a confidentiality agreement
5 with a Non-Party;

6 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
7 Order in this litigation, the relevant discovery request(s), and a reasonably specific
8 description of the information requested; and

9 (3) make the information requested available for inspection by the Non-
10 Party.

11 (c) If the Non-Party fails to object or seek a protective order from this court
12 within 14 days of receiving the notice and accompanying information, the
13 Receiving Party may produce the Non-Party's confidential information responsive
14 to the discovery request. If the Non-Party timely seeks a protective order, the
15 Receiving Party shall not produce any information in its possession or control that
16 is subject to the confidentiality agreement with the Non-Party before a
17 determination by the court. Absent a court order to the contrary, the Non-Party
18 shall bear the burden and expense of seeking protection in this court of its
19 Protected Material.

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has
3 disclosed Protected Material to any person or in any circumstance not authorized
4 under this Stipulated Protective Order, the Receiving Party must immediately (a)
5 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
6 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
7 the person or persons to whom unauthorized disclosures were made of all the terms
8 of this Order, and (d) request such person or persons to execute the
9 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit

10 A.

11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
12 PROTECTED MATERIAL

13 When a Producing Party gives notice to Receiving Parties that certain
14 inadvertently produced material is subject to a claim of privilege or other
15 protection, the obligations of the Receiving Parties are those set forth in Federal
16 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
17 whatever procedure may be established in an e-discovery order that provides for
18 production without prior privilege review. Pursuant to Federal Rule of Evidence
19 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
20 of a communication or information covered by the attorney-client privilege or

1 work product protection, the parties may incorporate their agreement in the
2 stipulated protective order submitted to the court.

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order no Party waives any right it otherwise would have to object to
8 disclosing or producing any information or item on any ground not addressed in
9 this Stipulated Protective Order. Similarly, no Party waives any right to object on
10 any ground to use in evidence of any of the material covered by this Protective
11 Order.

12 12.3 Filing Protected Material. Without written permission from the
13 Designating Party or a court order secured after appropriate notice to all interested
14 persons, a Party may not file in the public record in this action any Protected
15 Material. Protected Material may only be filed under seal pursuant to a court order
16 authorizing the sealing of the specific Protected Material at issue. A Party seeking
17 to file Protected Material shall file a motion to file under seal the Protected
18 Material and take appropriate steps to preserve confidentiality until the court rules
19 on the motion. The Designating Party shall have the burden of demonstrating that
20 sealing is appropriate under Federal Rule of Civil Procedure 26(c) and applicable

1 law, *see, e.g.*, *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir.
2 2006). If a Receiving Party's request to file Protected Material under seal is denied
3 by the court, then the Receiving Party may file the information in the public record
4 unless otherwise instructed by the court.

5 13. **FINAL DISPOSITION**

6 Within 60 days after the final disposition of this action, as defined in
7 paragraph 4, each Receiving Party must return all Protected Material to the
8 Producing Party or destroy such material. As used in this subdivision, "all
9 Protected Material" includes all copies, abstracts, compilations, summaries, and
10 any other format reproducing or capturing any of the Protected Material. Whether
11 the Protected Material is returned or destroyed, the Receiving Party must submit a
12 written certification to the Producing Party (and, if not the same person or entity, to
13 the Designating Party) by the 60 day deadline that (1) identifies (by category,
14 where appropriate) all the Protected Material that was returned or destroyed and
15 (2) affirms that the Receiving Party has not retained any copies, abstracts,
16 compilations, summaries or any other format reproducing or capturing any of the
17 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
18 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
19 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
20 reports, attorney work product, and consultant and expert work product, even if

1 such materials contain Protected Material. Any such archival copies that contain or
2 constitute Protected Material remain subject to this Protective Order as set forth in
3 Section 4 (DURATION).

4 The District Court Clerk is directed to enter this Order and provide copies to
5 counsel.

6 **DATED** this 11th day of December 2014.

7
8 *s/ Rosanna Malouf Peterson*
9 ROSANNA MALOUF PETERSON
10 Chief United States District Court Judge